

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 of the) CC Docket No. 92-115
Commission's Rules Governing)
the Public Mobile Services)
_____)

To: The Commission

COMMENTS OF PREMIERE PAGE, INC.

Premiere Page, Inc., pursuant to Section 1.415 of the FCC's Rules, 47 C.F.R. § 1.415 (1993), hereby submits these comments on the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The FCC has proposed, among other things, to revise retroactively its rules governing the assignment of 931 MHz paging channels. Its stated purpose is to "eliminate the backlog of 931 MHz applications and ensure that future channel assignments will be made in a fair and consistent manner."²

Premiere Page opposes adoption of the agency's proposal in its present form, because it would inappropriately prejudice the efforts of existing operators that applied years ago to develop and expand their wide-area 931 MHz paging systems. Rather than cure the backlog in this band,

¹ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, Further Notice of Proposed Rulemaking, FCC 94-102, released May 20, 1994 ("Further Notice").

² Id. at ¶ 17.

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the proposal would create additional conflict and litigation that would only further delay the assignment of these channels. Accordingly, Premiere Page recommends that the Commission adopt an alternative approach that will accommodate existing licensees and speed service to the public. Specifically, Premiere Page suggests that the agency adopt the following four-part procedure for the processing of pending 931 applications:

- (1) Require pending applicants to confirm their continued interest in a 931 MHz authorization so that any abandoned applications may be dismissed;
- (2) Determine the number of channels that were available at the time those applications were filed;
- (3) Either (a) process mutually exclusive applications in accordance with the FCC's current procedures or through a comparative hearing or (b) at a minimum, process mutually exclusive applications pending only before July 26, 1993, in a single lottery or comparative hearing;
- (4) Assign co-channels whenever possible to allow existing operators to expand their wide-area systems and afford those operators an adequate opportunity to file for additional facilities to serve their market areas.

I. BACKGROUND

Premiere Page is a leading provider of wide-area communications and voice-mail products and services in the United States. It wholly owns Q Media Company - Paging, Inc., with Domestic Public Land Mobile Radio Service

("DPLMRS") authorizations in Illinois and surrounding areas; Q Media Paging - Alabama, Inc., with DPLMRS authorizations in Alabama; and Premiere Page of Kansas, Inc., with 931 MHz authorizations in Illinois, Wisconsin, Indiana, Michigan and Missouri. Accordingly, Premiere Page is vitally interested in the Commission's proposal to revise its 931 MHz channel assignment procedures.

On June 12, 1992, the Commission released a Notice of Proposed Rulemaking in this proceeding to revise Part 22 of its rules governing public mobile services.³ This comprehensive review was the first revision of Part 22 of the rules since 1983. The Commission's stated objectives were to make its rules easier to understand, to eliminate outdated rules and unnecessary information collection requirements, to streamline licensing procedures and to allow licensees greater flexibility in providing service to the public.⁴

After the close of the pleading cycle and before the release of the FCC's decision in this proceeding, Congress amended the Communications Act to implement significant changes to the regulation of mobile radio service providers. Those amendments required the FCC to initiate a separate proceeding to restructure its regulatory framework for all

³ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, Notice of Proposed Rulemaking, 7 FCC Rcd 3658 (1992).

⁴ Id. at 3658.

mobile radio services.⁵ As a result, the agency deferred action on its Part 22 rewrite and instead released the instant Further Notice to address a limited number of issues that it believes can be resolved without affecting its related proceeding.

Premiere Page takes issue only with the agency's proposal to revise retroactively its rules governing the treatment of 931 MHz applications. It is concerned that the proposal will fail to achieve the agency's objectives and create additional, counterproductive conflict and litigation to the detriment of existing licensees and applicants.

**II. THE AGENCY'S PROPOSAL WILL UNFAIRLY
PREJUDICE EXISTING WIDE-AREA LICENSEES
WITH LONG-STANDING PLANS TO EXPAND SERVICE**

The Commission's proposal, as currently drafted, fails to recognize the need of wide-area service providers to expand their existing operations. Premiere Page has expended considerable resources to apply for and construct 931 MHz facilities in its service areas and is currently authorized to operate a regional system on 931.0875 MHz at various locations in the states of Illinois, Wisconsin, Indiana, Michigan and Missouri. As part of that system, Premiere Page sought to extend its coverage into the Chicago area and, in

⁵ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252.

early 1990, filed for authorization to construct 931.0875 MHz facilities in Chicago. That application has not yet been granted and would be adversely affected by the Commission's decision in this proceeding.

When Premiere Page applied for a 931 MHz authorization in Chicago, it was one of five applicants for three available channels. Thus, its chance of obtaining a channel was relatively high. Under the agency's new proposal, however, Premiere Page may be required to enter into a lottery with substantially more applicants or, worse, be forced to bid on a channel in an auction. As a result, Premiere Page may be foreclosed from expanding its regional coverage into the Chicago market.

The agency should decline retroactive adoption of a proposal that would unfairly harm parties in this fashion.

III. THE AGENCY'S PROPOSAL WILL PROMOTE APPLICATION ABUSE AND FURTHER DELAY THE PROVISION OF SERVICE TO THE PUBLIC

Premiere Page also is concerned that the agency's proposal, if adopted, would promote speculation and application abuse. The agency seeks comment on whether it should combine past, present, and even future applications in a single lottery or auction.⁶ Premiere Page believes the FCC approach will likely engender a flood of applications by

⁶ Further Notice, ¶¶ 16-17.

parties seeking to protect their interests or seize what appears to be a new opportunity. The agency's proposal also would generate further FCC litigation and eventually court challenges, not only by parties with pending applications, but also by others that will enter the fray should the FCC allow new parties to file applications.

Thus, rather than eliminate the backlog of applications and resolve pending petitions seeking reconsideration or review of applications that have been granted,⁷ the agency's proposal will likely strain already stressed Commission resources and further stall the processing of 931 MHz applications. The agency will become embroiled in legal and technical arguments addressed in petitions to deny, petitions for reconsideration, applications for Commission review and reconsideration and judicial appeal. Not only will the applications processors become involved, but also the Mobile Service Division legal staff, the Common Carrier Bureau's staff and the FCC's Office of the General Counsel.

Most unfortunately, the agency's proposal would delay service to the public. Premiere Page has been interested and willing since 1990 to extend service into the Chicago area. If the agency proceeds along its current course, Premiere Page might likely be required to wait years for the outcome

⁷ Id. at ¶ 15.

of judicial review before it may receive a license to operate in that area.

**IV. THE FCC SHOULD ADOPT AN ALTERNATIVE APPROACH
THAT ACCOMMODATES EXISTING WIDE-AREA OPERATORS**

Premiere Page recommends that the Commission adopt a more effective licensing mechanism than its current proposal to achieve the Commission's goals to speed licensing, reduce regulatory delay, and encourage publicly beneficial wide-area services for paging comparable to what has been accomplished for other services.

First, the agency should require pending applicants to confirm their continued interest in seeking an authorization in the 931 MHz paging band. Many applications have been pending for quite some time, and it is possible that certain applicants have abandoned their plans to construct 931 MHz facilities. All applicants should therefore be directed through a Public Notice or letter or both to confirm their interest so that the Commission may dismiss any abandoned applications.

Second, the Commission should calculate the number of channels that were available at the time those applications were initially filed to determine whether there are insufficient channels to assign to all pending applicants. Premiere Page recommends that the agency consider a channel to be "available" at the time an application is filed only if

the channel is unassigned, authorized under an expired construction permit, or terminated through discontinuance. A channel that discontinued operation after the application was filed should not be considered available to that particular applicant.

Third, if there are fewer channels available than applicants, the agency should process mutually exclusive applications in accordance with its current procedures. Thus, the FCC should apply the "rolling procedure" described in the Further Notice.⁸ Alternatively, the FCC could assign channels through the comparative hearing process. The agency's hearing process serves as an important mechanism to protect licensees' abilities to expand service.

The agency should not include future applications in this process, however, as it would unfairly prejudice the efforts and plans of existing operators that have been awaiting an authorization to extend their wide-area services. Moreover, if the Commission decides to combine all applications currently on file -- which Premiere Page opposes -- it should include at a minimum only those applications pending before July 26, 1993.

Fourth, the Commission should attempt to assign applicants a co-channel whenever possible to accommodate the expansion of their systems. Indeed, operation on the same

⁸ Id. at ¶ 14.

channel is essential to a wide-area system. As noted above, Premiere Page expended considerable resources to apply for and construct 931 MHz facilities in its service area and is currently authorized to operate a regional system on 931.0875 MHz at various locations in the Great Lakes area. The FCC should attempt to assign that channel to Premiere Page to allow it to expand this coverage into the Chicago area.

In addition, Premiere Page urges the Commission to afford existing operators an adequate opportunity to file for additional facilities to develop a viable paging system. Specifically, existing licensees should be permitted to apply for additional transmitter locations on their current channel to serve their "market area." Premiere Page postponed its expansion plans when it learned that the Commission had halted the assignment of channels in the Chicago area. Now that the agency has decided to begin again the licensing of these channels in certain markets, Premiere Page should be permitted a reasonable period of time to apply for additional facilities to complete its system without obstruction from parties that may seek unfairly to block such expansion.

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V. CONCLUSION

For the foregoing reasons, Premiere Page respectfully requests that the Commission adopt a revised approach for 931 MHz licensing that recognizes the legitimate interests of existing licensees and fulfills the public interest.

Respectfully submitted,

PREMIERE PAGE, INC.

By: Steven D. Scheiwe
Steven D. Scheiwe
Secretary & General Counsel

June 20, 1994